

REMARKS

This paper is in response to the official action dated January 24, 2008 (hereafter, "the official action"). This paper is timely filed as it is accompanied by a petition for extension of time and authorization to charge our credit card account in the amount of the requisite fee. The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed, or which should have been filed herewith to our Deposit Account No. 13-2855, under Order No. 29610/CDT386.

Claims 1-17 are pending in this application.

Restriction Requirement

At page 2 of the official action, the examiner identified three allegedly patentably distinct species, as follows:

- (I) a metal complex of formula $M(Ar^1Ar^2)_nL$;
- (II) a bidentate ligand L (starting material); and
- (III) a compound of Formula I.

The examiner correctly recognized that unity of invention practice, and not U.S. restriction practice under 35 U.S.C. §121, is applicable because this application is the U.S. national phase of an international (PCT) application. *See* M.P.E.P. §1893.03(d). The appropriate standard for determining unity of invention follows:

A group of inventions is considered linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding technical feature. The expression special technical features is defined as meaning those technical features that define the contribution which each claimed invention, considered as a whole, makes over the *prior art*.

Id. (emphasis added). "When making a lack of unity requirement, the examiner must (1) list the different groups of claims and (2) explain why each group lacks unity with each other group (i.e., why there is no single general inventive concept) specifically describing the unique special technical feature in each group." *Id.*

Here, the examiner simply asserted that "[t]hese species are deemed to lack unity of invention because they are not so linked as to form a single general inventive

concept under PCT Rule 13.1.” *See* official action at page 2 (emphasis added). The examiner further asserted that “there is no technical feature linking the inventions because all structural features are defined as variables.” *See* official action at page 3.

The examiner has neither cited a prior art document that discloses or suggests, for example, the method recited by claim 1, nor provided any evidence that the identified “species” lack a common technical feature that defines a contribution over the prior art. Thus, the examiner has not made the requisite showing to demonstrate a lack of unity of invention. Accordingly, the election requirement should be removed.

Provisional Election

Pursuant to the requirements of 37 C.F.R. § 1.143, the applicants provisionally elect $\text{Ir}(\text{ppy})_3$ as the metal complex of formula $\text{M}(\text{Ar}^1\text{Ar}^2)_n\text{L}$; phenyl pyridine as the bidentate ligand L; and, $[\text{Ir}(\text{ppy})_2\text{Cl}]_2$ as the compound of Formula I, with traverse.

Currently, claim 14 is generic in relation to the species identified by the examiner; claims 1-4, 6-13, and 15-17 read on the provisionally elected species; and claim 5 does not read on the provisionally elected species and therefore has been provisionally withdrawn.

CONCLUSION

Should the examiner wish to discuss the foregoing amendments and/or comments, or any matter of form or procedure in an effort to advance this application to allowance, she is respectfully invited to contact the undersigned attorney at the indicated telephone number.

Respectfully submitted,

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